

SENATE BILL NO. 149

INTRODUCED BY B. TASH

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS AND THE DEPARTMENT OF PUBLIC HEALTH
AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A FORENSIC PROGRAM FOR THE EXAMINATION
AND TREATMENT OF MENTALLY ILL OFFENDERS; PROVIDING FOR A SECURE RESIDENTIAL FORENSIC
TREATMENT FACILITY AND PROVIDING STANDARDS FOR THE FACILITY; REVISING THE USE OF THE
FORMER FORENSIC UNIT AT WARM SPRINGS; AMENDING SECTIONS 46-14-202, 46-14-221, 46-14-312,
53-1-209, AND 53-21-102, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Forensic program for examination and treatment of mentally ill offenders. (1) The department of public health and human services may administer a program of services for the examination and treatment of persons who are criminally charged or convicted and are in need of mental health examination or mental health treatment.

(2) The program ~~may~~ **MUST** include:

(a) the provision of mental health treatment along with addiction and other treatment services in a secure residential treatment facility to criminally convicted persons sentenced to the department of corrections or a state prison under Title 46, chapter 18, who are determined, while in the custody of the department of corrections or a state prison, to be exhibiting symptoms of mental illness;

(b) the provision of mental health treatment along with addiction and other treatment services in a secure residential treatment facility to persons committed to the director of the department of public health and human services under 46-14-221;

(c) the provision of mental health treatment along with addiction and other treatment services in a secure residential treatment facility or other setting to persons sentenced to the director of the department of public health and human services under 46-14-312; and

(d) the examination of persons under the authority of 46-14-202 to determine the status of their mental health for purposes of criminal law prosecutions.

1 (3) The program, subject to the availability of funding, ~~may~~ MUST include an array of mental health and
2 other services determined by the department of public health and human services to be appropriate for the
3 purposes of the program.

4 (4) The program ~~must~~ MAY include a secure residential forensic treatment facility. ~~The facility shall~~
5 ~~provide~~ THAT PROVIDES for the examination for mental illness and for the stabilization and improvement through
6 mental health treatment of persons who are criminally charged or convicted. The facility, at the discretion of the
7 director of the department of public health and human services, may be sited at the former forensic unit of the
8 Montana state hospital at Warm Springs.

9 (5) The secure residential forensic treatment facility may not serve persons with mental illness who are
10 the subjects of civil commitment as provided in Title 53, chapter 21.

11 (6) The superintendent of the Montana state hospital shall administer the secure residential forensic
12 treatment facility. The superintendent, in collaboration and concurrence with the department of corrections, ~~may~~
13 SHALL adopt admission criteria and treatment models that are appropriate for the forensic populations to be
14 served at the facility.

15 (7) ~~The superintendent of the Montana state hospital shall impose on residents behavioral and other~~
16 ~~measures that are necessary to further the effectiveness of treatment and to provide for the safety of the staff and~~
17 ~~residents.~~ The superintendent, in collaboration and concurrence with the department of corrections, shall
18 implement security measures appropriate to ensure that the treatment settings are secure, that staff and residents
19 are safe from harm, and that the treatment settings are conducive to treatment. Measures implemented for
20 security purposes must conform to the applicable standards for correctional security published by the American
21 correctional association.

22 (8) The department of corrections, with the concurrence of the department of public health and human
23 services, may temporarily transfer to the secure residential forensic treatment facility, for examination or
24 treatment, persons who are incarcerated at the Montana state prison or the Montana women's prison or who are
25 in the custody of other correctional facilities and programs.

26 (9) While in residence at the secure residential forensic treatment facility, persons sentenced to a state
27 prison or to the custody of the department of corrections are resident only for the purposes of treatment and
28 remain in the custody of the state prison or the department of corrections. The superintendent of the Montana
29 state hospital may transfer the persons described in this subsection back to the state prison or the department
30 of corrections when appropriate. A person receiving treatment at the secure residential forensic treatment facility

1 who has been sentenced to the custody of the director of the department of public health and human services
2 or to a state prison may be released on parole as provided in 46-23-201.

3
4 **NEW SECTION. Section 2. ~~Compliance with applicable building and fire codes for correctional~~**
5 **facilities. SECURE RESIDENTIAL FORENSIC TREATMENT FACILITY -- CERTIFICATION -- ACCREDITATION -- OVERSIGHT --**
6 **PLANNING.** (1) A secure residential forensic treatment facility described in [section 1] ~~must be certified by:~~

7 (a) MUST BE CERTIFIED BY the department of labor and industry under Title 50, chapter 60, for compliance
8 with the national and state building codes applicable to correctional facilities; ~~and~~

9 (b) MUST BE CERTIFIED BY the department of justice under Title 50, chapter 61, for compliance with the
10 national and state fire codes applicable to correctional facilities; AND

11 (c) SHALL APPLY FOR, ACQUIRE, AND MAINTAIN ACCREDITATION WITH THE NATIONAL COMMISSION ON
12 CORRECTIONAL HEALTH CARE.

13 (2) ALL CERTIFICATES, ACCREDITATION REPORTS, AND RELATED INVESTIGATIONS, REPORTS, AND PLANS MUST
14 BE AVAILABLE FOR PUBLIC INSPECTION.

15 (3) THE MENTAL DISABILITIES BOARD OF VISITORS, AS PROVIDED FOR IN 2-15-211, IS AUTHORIZED TO PERFORM
16 ONSITE REVIEW OF THE SECURE RESIDENTIAL FORENSIC TREATMENT FACILITY IN ACCORDANCE WITH THE STANDARDS FOR
17 MENTAL HEALTH CARE AS DETERMINED BY THE NATIONAL COMMISSION ON CORRECTIONAL HEALTH CARE. THE MENTAL
18 DISABILITIES BOARD OF VISITORS REVIEW TEAMS MUST RECEIVE TRAINING ON THE MENTAL HEALTH STANDARDS OF THE
19 NATIONAL COMMISSION ON CORRECTIONAL HEALTH CARE PRIOR TO CONDUCTING THE ONSITE REVIEW.

20 (4) THE DEPARTMENTS LISTED IN SUBSECTION (1) SHALL WORK COLLABORATIVELY WITH MEMBERS OF THE
21 MENTAL HEALTH OVERSIGHT ADVISORY COUNCIL, MEMBERS OF THE CORRECTIONS ADVISORY COUNCIL, AND OTHERS WITH
22 EXPERTISE FROM IDENTIFIED STAKEHOLDER GROUPS IN THE DEVELOPMENT OF THE ELEMENTS OF THE PROGRAM, STAFF
23 TRAINING, AND PROGRAM POLICIES AND PROCEDURES.

24 (2)(5) A secure residential forensic treatment facility is not subject to licensing as a health care facility
25 as provided for in 50-5-201.

26
27 **NEW SECTION. SECTION 3. CERTIFICATION OF READINESS.** PRIOR TO OPENING A SECURE RESIDENTIAL
28 FORENSIC TREATMENT FACILITY, THE OFFICE OF THE GOVERNOR SHALL CERTIFY TO THE LEGISLATIVE FINANCE COMMITTEE
29 THAT ALL PREREQUISITES REQUIRED BY [SECTION 2] FOR OPENING THE FACILITY HAVE BEEN COMPLETED, INCLUDING:

30 (1) CERTIFICATION BY THE DEPARTMENT OF LABOR AND INDUSTRY AND THE DEPARTMENT OF JUSTICE AS

1 PROVIDED IN [SECTION 2(1)(A) AND (1)(B)]; AND

2 (2) TREATMENT PROGRAMMING AND POLICY DEVELOPMENT AS PROVIDED IN [SECTION 2(4)].

3
4 **Section 4.** Section 46-14-202, MCA, is amended to read:

5 **"46-14-202. Examination of defendant.** (1) If the defendant or the defendant's counsel files a written
6 motion requesting an examination or if the issue of the defendant's fitness to proceed is raised by the district
7 court, prosecution, or defense counsel, the district court shall appoint at least one qualified psychiatrist, licensed
8 clinical psychologist, or advanced practice registered nurse or shall request the superintendent of the Montana
9 state hospital to designate at least one qualified psychiatrist, licensed clinical psychologist, or advanced practice
10 registered nurse, who may be or include the superintendent, to examine and report upon the defendant's mental
11 condition.

12 (2) The court may order the defendant to be committed to a hospital or other suitable facility or to the
13 director of the department of public health and human services for placement in the Montana state hospital, the
14 Montana developmental center, or a secure residential forensic treatment facility, as provided for in [section 1],
15 for the purpose of the examination for a period not exceeding 60 days or a longer period that the court determines
16 to be necessary for the purpose and may direct that a qualified psychiatrist, licensed clinical psychologist, or
17 advanced practice registered nurse retained by the defendant be permitted to witness and participate in the
18 examination.

19 (3) In the examination, any method may be employed that is accepted by the medical or psychological
20 profession for the examination of those alleged to be suffering from mental disease or defect.

21 (4) (a) The costs incurred for an examination ordered under subsection (2) must be paid as follows:

22 (i) if the issue of the defendant's fitness to proceed was raised by the district court or the examination
23 was requested by the prosecution, the cost of the examination and other associated expenses must be paid by
24 the office of court administrator, as provided in 3-5-901;

25 (ii) if the defendant was represented by an attorney assigned pursuant to the Montana Public Defender
26 Act, Title 47, chapter 1, and the examination was requested by the defendant or the defendant's counsel, the cost
27 of the examination and other associated expenses must be paid by the office of state public defender;

28 (iii) if the defendant was represented by an attorney assigned pursuant to the Montana Public Defender
29 Act, Title 47, chapter 1, and the examination was jointly requested by the prosecution and defense counsel or
30 the need for the examination was jointly agreed to by the prosecution and defense, the cost of the examination

1 and other associated expenses must be divided and paid equally by the office of court administrator and the office
2 of state public defender.

3 (b) For purposes of this subsection (4), "other associated expenses" means the following costs incurred
4 in association with the commitment to a hospital or other suitable facility for the purpose of examination,
5 regardless of whether the examination is done at the Montana state hospital or any other facility:

6 (i) the expenses of transporting the defendant from the place of detention to the place where the
7 examination is performed and returning the defendant to detention, including personnel costs of the law
8 enforcement agency by whom the defendant is detained;

9 (ii) housing expenses of the facility where the examination is performed; and

10 (iii) medical costs, including medical and dental care, including costs of medication."
11

12 **Section 5.** Section 46-14-221, MCA, is amended to read:

13 **"46-14-221. Determination of fitness to proceed -- effect of finding of unfitness -- expenses. (1)**

14 The issue of the defendant's fitness to proceed may be raised by the court, by the defendant or the defendant's
15 counsel, or by the prosecutor. When the issue is raised, it must be determined by the court. If neither the
16 prosecutor nor the defendant's counsel contests the finding of the report filed under 46-14-206, the court may
17 make the determination on the basis of the report. If the finding is contested, the court shall hold a hearing on the
18 issue. If the report is received in evidence upon the hearing, the parties have the right to subpoena and
19 cross-examine the psychiatrists or licensed clinical psychologists who joined in the report and to offer evidence
20 upon the issue.

21 (2) (a) If the court determines that the defendant lacks fitness to proceed, the proceeding against the
22 defendant must be suspended, except as provided in subsection (4), and the court shall commit the defendant
23 to the custody of the director of the department of public health and human services to be placed in an
24 appropriate mental health facility, as defined in 53-21-102, secure residential forensic treatment facility, provided
25 for in [section 1], or residential facility, as defined in 53-20-102, of the department of public health and human
26 services for so long as the unfitness endures or until disposition of the defendant is made pursuant to this section,
27 whichever occurs first.

28 (b) The facility shall develop an individualized treatment plan to assist the defendant to gain fitness to
29 proceed. The treatment plan may include a physician's prescription of reasonable and appropriate medication
30 that is consistent with accepted medical standards. If the defendant refuses to comply with the treatment plan,

1 the facility may petition the court for an order requiring compliance. The defendant has a right to a hearing on the
2 petition. The court shall enter into the record a detailed statement of the facts upon which an order is made, and
3 if compliance with the individualized treatment plan is ordered, the court shall also enter into the record specific
4 findings that the state has proved an overriding justification for the order and that the treatment being ordered
5 is medically appropriate.

6 (3) (a) The committing court shall, within 90 days of commitment, review the defendant's fitness to
7 proceed. If the court finds that the defendant is still unfit to proceed and that it does not appear that the defendant
8 will become fit to proceed within the reasonably foreseeable future, the proceeding against the defendant must
9 be dismissed, except as provided in subsection (4).

10 (b) If the court determines that the defendant lacks fitness to proceed because the defendant has a
11 mental disorder, the proceeding against the defendant must be dismissed and the prosecutor shall petition the
12 court in the manner provided in Title 53, chapter 21, to determine the disposition of the defendant pursuant to
13 those provisions.

14 (c) If the court determines that the defendant lacks fitness to proceed because the defendant has a
15 developmental disability as defined in 53-20-102, the proceeding against the defendant must be dismissed and
16 the prosecutor shall petition the court in the manner provided in Title 53, chapter 20, to determine the disposition
17 of the defendant pursuant to those provisions.

18 (4) The fact that the defendant is unfit to proceed does not preclude any legal objection to the
19 prosecution that is susceptible to fair determination prior to trial and that is made without the personal participation
20 of the defendant.

21 (5) The expenses of sending the defendant to the custody of the director of the department of public
22 health and human services to be placed in an appropriate facility of the department of public health and human
23 services, of keeping the defendant there, and of bringing the defendant back are payable by the office of court
24 administrator as a district court expense as provided for in 3-5-901."

25
26 **Section 6.** Section 46-14-312, MCA, is amended to read:

27 **"46-14-312. Sentence to be imposed.** (1) If the court finds that the defendant at the time of the
28 commission of the offense of which the defendant was convicted did not suffer from a mental disease or defect
29 as described in 46-14-311, the court shall sentence the defendant as provided in Title 46, chapter 18.

30 (2) If the court finds that the defendant at the time of the commission of the offense suffered from a

1 mental disease or defect or developmental disability as described in 46-14-311, any mandatory minimum
2 sentence prescribed by law for the offense need not apply. The court shall sentence the defendant to be
3 committed to the custody of the director of the department of public health and human services to be placed, after
4 consideration of the recommendations of the professionals providing treatment to the defendant and
5 recommendations of the professionals who have evaluated the defendant, in an appropriate correctional facility,
6 mental health facility, as defined in 53-21-102, secure residential forensic treatment facility, provided for in
7 [section 1], residential facility, as defined in 53-20-102, or developmental disabilities facility, as defined in
8 53-20-202, for custody, care, and treatment for a definite period of time not to exceed the maximum term of
9 imprisonment that could be imposed under subsection (1). The director may, after considering the
10 recommendations of the professionals providing treatment to the defendant and recommendations of the
11 professionals who have evaluated the defendant, subsequently transfer the defendant to another correctional,
12 mental health, residential, or developmental disabilities facility that will better serve the defendant's custody, care,
13 and treatment needs. The authority of the court with regard to sentencing is the same as authorized in Title 46,
14 chapter 18, if the treatment of the individual and the protection of the public are provided for.

15 (3) Either the director or a defendant whose sentence has been imposed under subsection (2) may
16 petition the sentencing court for review of the sentence if the professional person certifies that:

17 (a) the defendant no longer suffers from a mental disease or defect;

18 (b) the defendant's mental disease or defect no longer renders the defendant unable to appreciate the
19 criminality of the defendant's conduct or to conform the defendant's conduct to the requirements of law;

20 (c) the defendant suffers from a mental disease or defect or developmental disability but is not a danger
21 to the defendant or others; or

22 (d) the defendant suffers from a mental disease or defect that makes the defendant a danger to the
23 defendant or others, but:

24 (i) there is no treatment available for the mental disease or defect;

25 (ii) the defendant refuses to cooperate with treatment; or

26 (iii) the defendant will no longer benefit from active inpatient treatment for the mental disease or defect.

27 (4) The sentencing court may make any order not inconsistent with its original sentencing authority,
28 except that the length of confinement or supervision must be equal to that of the original sentence. The
29 professional person shall review the defendant's status each year."
30

1 **Section 7.** Section 53-1-209, MCA, is amended to read:

2 **"53-1-209. Allowed purpose.** The former forensic unit at Warm Springs is the property of the
3 department of corrections, and the building may be used ~~only~~:

4 (1) for treatment of inmates with chemical dependency or other mental or physical health-related
5 problems; or

6 (2) as a secure residential forensic treatment facility as provided in [section 1]."

7
8 **Section 8.** Section 53-21-102, MCA, is amended to read:

9 **"53-21-102. Definitions.** As used in this part, the following definitions apply:

10 (1) "Abuse" means any willful, negligent, or reckless mental, physical, sexual, or verbal mistreatment or
11 maltreatment or misappropriation of personal property of any person receiving treatment in a mental health facility
12 that insults the psychosocial, physical, or sexual integrity of any person receiving treatment in a mental health
13 facility.

14 (2) "Behavioral health inpatient facility" means a licensed facility of 16 beds or less designated by the
15 department that:

16 (a) may be a freestanding licensed hospital or a distinct part of another licensed hospital and that is
17 capable of providing inpatient psychiatric services, including services to persons with mental illness and
18 co-occurring chemical dependency; and

19 (b) has contracted with the department to provide services to persons who have been involuntarily
20 committed for care and treatment of a mental disorder pursuant to this title.

21 (3) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created
22 by 2-15-211.

23 (4) "Commitment" means an order by a court requiring an individual to receive treatment for a mental
24 disorder.

25 (5) "Court" means any district court of the state of Montana.

26 (6) "Department" means the department of public health and human services provided for in 2-15-2201.

27 (7) "Emergency situation" means a situation in which any person is in imminent danger of death or bodily
28 harm from the activity of a person who appears to be suffering from a mental disorder and appears to require
29 commitment.

30 (8) "Friend of respondent" means any person willing and able to assist a person suffering from a mental

1 disorder and requiring commitment or a person alleged to be suffering from a mental disorder and requiring
2 commitment in dealing with legal proceedings, including consultation with legal counsel and others. The friend
3 of respondent may be the next of kin, the person's conservator or legal guardian, if any, representatives of a
4 charitable or religious organization, or any other person appointed by the court to perform the functions of a friend
5 of respondent set out in this part. Only one person may at any one time be the friend of respondent within the
6 meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the
7 respondent. The court may at any time, for good cause, change its designation of the friend of respondent.

8 (9) (a) "Mental disorder" means any organic, mental, or emotional impairment that has substantial
9 adverse effects on an individual's cognitive or volitional functions.

10 (b) The term does not include:

11 (i) addiction to drugs or alcohol;

12 (ii) drug or alcohol intoxication;

13 (iii) mental retardation; or

14 (iv) epilepsy.

15 (c) A mental disorder may co-occur with addiction or chemical dependency.

16 (10) (a) "Mental health facility" or "facility" means the state hospital, the Montana mental health nursing
17 care center, or a hospital, a behavioral health inpatient facility, a mental health center, a residential treatment
18 facility, or a residential treatment center licensed or certified by the department that provides treatment to children
19 or adults with a mental disorder.

20 (b) The term does not include:

21 (i) ~~A~~ a correctional institution or facility or jail; or

22 (ii) ~~is not a mental health facility within the meaning of this part~~ a secure residential forensic treatment
23 facility provided for in [section 1].

24 (11) "Mental health professional" means:

25 (a) a certified professional person;

26 (b) a physician licensed under Title 37, chapter 3;

27 (c) a professional counselor licensed under Title 37, chapter 23;

28 (d) a psychologist licensed under Title 37, chapter 17;

29 (e) a social worker licensed under Title 37, chapter 22; or

30 (f) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in

1 psychiatric mental health nursing.

2 (12) (a) "Neglect" means failure to provide for the biological and psychosocial needs of any person
3 receiving treatment in a mental health facility, failure to report abuse, or failure to exercise supervisory
4 responsibilities to protect patients from abuse and neglect.

5 (b) The term includes but is not limited to:

6 (i) deprivation of food, shelter, appropriate clothing, nursing care, or other services;

7 (ii) failure to follow a prescribed plan of care and treatment; or

8 (iii) failure to respond to a person in an emergency situation by indifference, carelessness, or intention.

9 (13) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and
10 sisters of a person.

11 (14) "Patient" means a person committed by the court for treatment for any period of time or who is
12 voluntarily admitted for treatment for any period of time.

13 (15) "Peace officer" means any sheriff, deputy sheriff, marshal, police officer, or other peace officer.

14 (16) "Professional person" means:

15 (a) a medical doctor;

16 (b) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in
17 psychiatric mental health nursing; or

18 (c) a person who has been certified, as provided for in 53-21-106, by the department.

19 (17) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a
20 professional person.

21 (18) "Respondent" means a person alleged in a petition filed pursuant to this part to be suffering from a
22 mental disorder and requiring commitment.

23 (19) "State hospital" means the Montana state hospital."
24

25 **NEW SECTION. Section 9. Saving clause.** [This act] does not affect rights and duties that matured,
26 penalties that were incurred, or proceedings that were begun before [the effective date of this act].
27

28 **NEW SECTION. Section 10. Severability.** If a part of [this act] is invalid, all valid parts that are
29 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
30 the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 11. Codification instruction.** [Sections 1 ~~and 2~~ THROUGH 3] are intended to be codified as an integral part of Title 53, chapter 30, and the provisions of Title 53, chapter 30, apply to [sections 1 ~~and 2~~ THROUGH 3].

5

6 NEW SECTION. **Section 12. Effective date.** [This act] is effective July 1, 2007.

7 - END -